

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATIONAL RIFLE ASSOCIATION OF AMERICA,)	Case No. 18-cv-0566
Plaintiff,)	TJM/CFH
v.)	
ANDREW CUOMO, both individually and in his official capacity; MARIA T. VULLO, both individually and in her official capacity; and the NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES,)	MOTION OF AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
Defendants.)	

The American Civil Liberties Union (“ACLU”) respectfully moves this Court for leave to file an amicus curiae brief in support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss (Dkt. No. 40). Participation by the ACLU as amicus curiae will not delay the briefing or argument in this case. The ACLU is filing its brief within the time allowed for Plaintiff’s Opposition to Defendants’ Motion to Dismiss. A copy of the proposed brief is attached as Exhibit A to this motion. Plaintiff consents to the motion. Counsel for the ACLU contacted counsel for Defendants via email earlier this afternoon to request Defendants’ position on this motion; Defendants have not responded to the ACLU’s request.

The ACLU is a nationwide, nonprofit, nonpartisan organization with over 1.5 million members dedicated to defending the principles embodied in the Constitution and our nation’s civil rights laws. For nearly a century, the ACLU has been at the forefront of efforts nationwide to protect the full array of civil rights and civil liberties. Since its founding in 1920, the ACLU

has frequently appeared before courts throughout the United States in First Amendment cases, both as direct counsel and as amicus curiae. Many landmark civil rights decisions of the 1950s and 1960s arose out of free speech controversies, and involved the government's attempted use of its arrest powers to silence controversial ideas. See, e.g., *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969). History demonstrates that governmental efforts to retaliate against particular viewpoints are often aimed at those who challenge and criticize the status quo. The preservation of the principle of viewpoint neutrality is therefore of immense concern to the ACLU, its clients, and its members and donors.

Advocacy groups across the political spectrum, including the ACLU, rely on access to a number of basic services in order to function. Many of these services are highly regulated, including insurance, banking, legal services, and accounting. In this case, Plaintiff National Rifle Association of America (“NRA”) has alleged that the New York Department of Financial Services (“DFS”), the Department’s Superintendent Maria Vullo, and Governor Andrew Cuomo have carried out a “campaign to chill the political speech of the NRA and other so-called ‘gun promotion’ organizations by leveraging state power to punish[] financial institutions which maintain business arrangements with the NRA.” Amended Complaint Dkt. No. 37 (“Compl.”) ¶ 21. If true, those allegations represent a blatant violation of the First Amendment. Although public officials are free to express their opinions and may condemn viewpoints or groups they view as inimical to public welfare, they cannot abuse their regulatory authority to retaliate against disfavored advocacy organizations and to impose burdens on those organizations’ ability to conduct lawful business.

Accordingly, the ACLU respectfully requests that the Court grant its motion for leave to file brief as amicus curiae in support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss.

Dated: August 24, 2018

Respectfully submitted,

David Cole
Cecillia D. Wang
Ben Wizner
/s/Brian Hauss*
Brian Hauss
Jacob Hutt
American Civil Liberties Union
Foundation
(212) 549-2500
bhauss@aclu.org

*Admitted *Pro Hac Vice*

Attorneys for Proposed Amicus Curiae
American Civil Liberties Union

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the Northern District of New York by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/ Brian Hauss

Brian Hauss